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Attorney Docket No. S-2446.01
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Group Art Unit: 1621
KISHIMOTO; MATSUNAMI) Examiner: Karl J. Puttlitz
Serial No. 09/895,416)
Filed: July 02, 2001)

For: LOWER ALKANE OXIDATIVE DEHYDROGENATION CATALYST
AND A PROCESS FOR PRODUCING OLEFINS

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RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

Commissioner of Patents
Alexandria, VA 22313-1450

Sir:

This is in response to the Official Action bearing a mail date of July 11, 2003. The one-month shortened statutory period for response is set to expire on August 11, 2003. Accordingly, this response is timely filed.

In view of the following remarks, Applicants respectfully request the Examiner to withdraw the pending restriction requirement.

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SUMMARY OF RESTRICTION REQUIREMENT AND SPECIES ELECTION

The Restriction Requirement states as follows:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-8, drawn to a process for producing an olefin, classified in class 585 subclass 500+.

II. Claims 9-21, drawn to a production of unsaturated acids classified in class 562 subclass 512+.

PROVISIONAL ELECTION

Applicants provisionally elect with traverse claims 1-8, drawn to a Group I for a process for producing an olefin as stated in the Restriction Requirement.

TRAVERSAL

Applicants respectfully traverse the Examiner's Restriction Requirement because presently pending claims 1-21 do not recite mutually exclusive limitations that separate the alleged production processes from each other.

Binding precedent states that the touchstone for requiring restriction is determining whether two or more independent and distinct inventions are claimed within the same application. MPEP §806. Restriction should never be required where the claims of an

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application define the same essential characteristics of a single disclosed embodiment of the invention. MPEP §806.03.

Furthermore, claims alleged to be drawn to different processes must contain mutually exclusive limitations defining those allegedly different species. MPEP §806.04(f). For example, a proper restriction can be made between a first claim reciting limitations which under the disclosure are found in a first species but not in a second, and a second claim reciting limitations disclosed only for the second species and not the first. Id. In other words, claims to be restricted to different species must contain within the language of the claim the mutually exclusive limitations for those species.

(2) In the present application, claims 1-21 do not recite mutually exclusive limitations that separate the alleged production processes from each other. Furthermore, a clear relationship between the species is disclosed. For these reasons, Applicants respectfully request that the Restriction be withdrawn.

In the event the restriction is not overcome, Applicants preserve the right to pursue the subject matter of the unelected claims in later applications.

CONCLUSION

In view of the foregoing, Applicants respectfully request the

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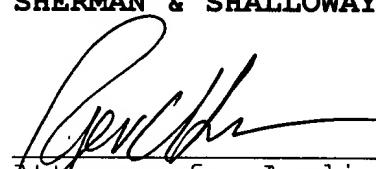
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Examiner to reconsider and withdraw the restriction requirement and to examine all of the claims pending in this application.

If the Examiner has any questions or wishes to discuss this matter, the Examiner is welcomed to telephone the undersigned attorney.

Respectfully submitted,

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